

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION**

**LINO W. CANTU**

§

§

§

**VS.**

§

**CIVIL ACTION NO. \_\_\_\_\_**

§

**ALLSTATE TEXAS LLOYDS AND  
MATTHEW LERSCH**

§

**JURY DEMANDED**

§

**NOTICE OF REMOVAL**

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW ALLSTATE VEHICLE AND PROPERTY INSURANCE COMPANY AND MATTHEW LERSCH and pursuant to Rule 15, Federal Rules of Civil Procedure, and 28 U.S.C. Sections 1441 and 1332, files this their Notice of Removal and in connection therewith would respectfully show the Court the following:

**I.  
BACKGROUND**

Petitioners are Defendants in a civil action now pending in the 430<sup>th</sup> Judicial District Court, Hidalgo County, Texas, Cause Number C-1344-17-J, styled *Lino W. Cantu v. Allstate Texas Lloyds and Matthew Lersch*, wherein Plaintiff seeks monetary relief for property damage, and alleged violations of the Texas Insurance Code, including violations of the Prompt Payment of Claims Act and Unfair Settlement Practices, as well as claims for breach of the duty of good faith and fair dealing and fraud.

**II.  
BASIS FOR REMOVAL**

The district courts of the United States have original jurisdiction over this action based on diversity of citizenship among the parties, in that the Defendants are diverse in citizenship from the Plaintiff.

### **III. DIVERSITY IN CITIZENSHIP**

The Plaintiff, Lino W. Cantu, is domiciled in Hidalgo County, in the State of Texas, and was domiciled there at the time this action was commenced. Plaintiff was at that time and is now a citizen of the State of Texas.

Allstate Texas Lloyds, Defendant, is a Lloyds plan, an entity engaged in the business of writing insurance on the Lloyds plan. The Lloyds plan is an unincorporated association, which is considered to have the citizenship of its members, the underwriters. Allstate Texas Lloyds was, and at the date of this Notice, remains, an association of underwriters whose individual underwriters are all residents and citizens of the States of Illinois and New Jersey<sup>1</sup>. The United States Supreme Court has consistently held for over one hundred years that the “citizenship of an unincorporated association [such as Allstate] is determined . . . solely by the citizenship of its members.” *See Massey v. State Farm Lloyds Ins. Co.* 993 F. Supp. 568, 570 (S.D. Tex. 1998); *see also Gore v. Stenson*, 616 F. Supp. 895, 898-899 (S.D. Tex. 1984) The underwriters for Allstate Texas Lloyds, all reside outside the State of Texas and have continuously resided outside the State of Texas from January 1, 2009 to the present. Accordingly, diversity of citizenship exists among the parties.

Defendant, Matthew Lersch has not been served. Matthew Lersch is not a resident of Texas, but a citizen of the State of Alabama and no other state. Accordingly, diversity of citizenship exists among the parties.

### **IV. AMOUNT IN CONTROVERSY**

The amount in controversy in this action exceeds, exclusive of interests and costs, the sum of Seventy-Five Thousand Dollars (\$75,000.00). Plaintiff’s Original Petition seeks monetary damages

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<sup>1</sup> An Affidavit regarding the residency of the underwriters will be supplemented.

between \$100,000.00 and \$200,000.00<sup>2</sup>.

Further, should Plaintiff prevail on the claims against Defendants stated in the Plaintiff's Original Petition, attached to this Notice, Plaintiff would be entitled to damages in excess of Seventy-Five Thousand Dollars (\$75,000.00). The applicable policy provides dwelling limits of \$121,000.00, other structure limits of \$12,100.00 and contents coverage of \$64,400.00<sup>3</sup>.

Considering Plaintiff's pleadings and the damages Plaintiff would be entitled to, should he prevail, the amount in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00).

#### **V.**

Removal of this action is proper under 28 U.S.C. §1441, since it is a civil action brought in a state court, and the federal district courts have original jurisdiction over the subject matter under 28 U.S.C. §1332 because the Plaintiff and Defendants are diverse in citizenship and the amount in controversy exceeds \$75,000.00.

#### **VI.**

This notice of removal is being filed within thirty (30) days after receipt by Petitioners of Plaintiff's Original Petition, which was the first notice to Defendants of this lawsuit. This removal is filed under 28 U.S.C. Section 1446(b).

#### **VII.**

Petitioners' time to answer or remove with respect to the Plaintiff's Original Petition has not expired. Plaintiff's Original Petition was served on the Defendant Allstate Vehicle and Property Insurance Company on April 12, 2017. All Defendants properly joined and served consent to the removal of this case to Federal Court.

#### **VIII.**

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<sup>2</sup> See Plaintiff's Original Petition Paragraph III

<sup>3</sup> See attached Exhibit A.

This action is one over which this Court has original jurisdiction under the provisions of 28 U.S.C. Section 1331 and this action may be removed to this Court by Petitioners, pursuant to the provisions of 28 U.S.C. Section 1441. Copies of all pleadings including the docket sheet on file with the State Court are attached hereto.

WHEREFORE, ALLSTATE TEXAS LLOYDS AND MATTHEW LERSCH Defendants in this action, pursuant to these statutes and in conformance with the requirements set forth in 28 U.S.C. §1446, removes this action for trial from the 430<sup>th</sup> Judicial District Court, Hidalgo County, Texas to this Court, on this 12<sup>th</sup> day of May, 2017.

Respectfully submitted,

BY: /s/ Rosemary Conrad-Sandoval

Rosemary Conrad-Sandoval

Attorney-in-charge

State Bar #04709300

Federal ID #13738

Elizabeth Ferguson Herrera

State Bar #24087716

Federal ID #2877535

Of Counsel

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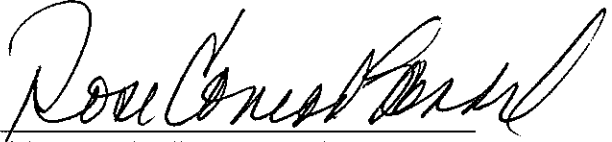
(956) 386-1625 (Fax)

ATTORNEYS FOR DEFENDANT

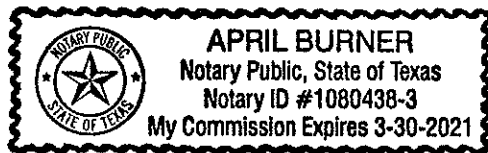
**VERIFICATION**

THE STATE OF TEXAS :  
:  
COUNTY OF HIDALGO :

I, ROSEMARY CONRAD-SANDOVAL being first duly sworn, depose and say that: I am counsel for Petitioner, ALLSTATE TEXAS LLOYDS; I am familiar with the contents of the above; and to the best of my knowledge the contents thereof are true and correct.

  
ROSEMARY CONRAD-SANDOVAL

SUBSCRIBED AND SWORN TO BEFORE ME by the said ROSEMARY CONRAD-SANDOVAL, this 12<sup>th</sup> day of May, 2017 to certify which witness my hand and seal of office.



  
Notary Public, State of Texas

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that a true and correct copy of the foregoing Notice of Removal has been mailed, Certified Mail, Return Receipt Requested, to the Attorney for Plaintiff, as follows:

William T. Jones  
Robert D. Green  
Daniel P. Barton  
Roy J. Elizondo  
GREEN & BARTON  
1201 Shepherd Dr.  
Houston, Texas 77007

on this 12<sup>th</sup> day of May 2017.

/s/ Rosemary Conrad-Sandoval  
ROSEMARY CONRAD-SANDOVAL